

STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF MACOMB

DANIEL J. BAJOR,

Plaintiff,

vs.

Case No. 2005-4640-CD

EFTEC CORPORATION,

Defendant.

OPINION AND ORDER

Defendant has filed a motion for summary disposition and other relief pursuant to MCR 2.116(C)(8) and (10). Plaintiff has filed a response seeking denial of that motion.

I

Plaintiff filed this action on November 17, 2005. Plaintiff asserted in his complaint that on November 19, 2002 defendant terminated his employment. After plaintiff's Equal Employment Opportunity Commission ("EEOC") retaliation charge was dismissed, he signed a severance agreement with defendant on December 18, 2002. In June 2003 plaintiff reviewed the EEOC record and allegedly discovered discrepancies. Plaintiff now seeks to rescind the severance agreement alleging count I fraudulent inducement of a contract.

II

Summary disposition may be granted pursuant to MCR 2.116(C)(8) on the ground that the opposing party "has failed to state a claim on which relief can be granted." *Radtke v Everett*, 442 Mich 368, 373; 501 NW2d 155 (1993). All factual allegations are accepted as true, as well as any reasonable inferences or conclusions that can be drawn from the facts. *Id.* The motion



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should be granted only when the claim is so clearly unenforceable as a matter of law that no factual development could possibly justify a right of recovery. *Wade v Dep't of Corrections*, 439 Mich 158, 163; 483 NW2d 26 (1992); *Cork v Applebee's Inc*, 239 Mich App 311, 315-316; 608 NW2d 62 (2000).

A motion under MCR 2.116(C)(10) tests the factual support for a claim. In reviewing such a motion, the court will consider affidavits, pleadings, depositions, admissions, and documentary evidence filed in the action or submitted by the parties, MCR 2.116(G)(5), in the light most favorable to the party opposing the motion. *Smith v Globe Life Insurance Co*, 460 Mich 446, 454; 597 NW2d 28 (1999). A trial court may grant a motion for summary disposition under MCR 2.116(C)(10) if the affidavits or other documentary evidence show that there is (1) no genuine issue in respect to any material fact and (2) the moving party is entitled to judgment as a matter of law. *Smith, supra*. If the opposing party fails to present documentary evidence establishing the existence of a material factual dispute, the motion is properly granted. *Id.* at 446.

III

Defendant asserts that plaintiff failed to plead fraud with requisite specificity. According to defendant, plaintiff failed to present evidence of false representation and that defendant intended plaintiff rely on the representation. In addition, defendant claims plaintiff did not tender back the consideration received under the release agreement.

Plaintiff responds that the record indicates defendant tampered with evidence and committed perjury. Plaintiff claims his deposition, affidavits, and employment records establish the elements of fraud. Further, plaintiff argues the tender back requirement is moot because he attempted to tender consideration back to defendant on several occasions.

The Court presumes a party executed a release knowingly and that consideration was received. *Stefanac v Cranbrook Educational Community*, 435 Mich 155, 164-165; 458 NW2d 56 (1990). Plaintiff has the burden of proving his admitted signing of a release was fraudulently induced. *Id.* at 165; *Porth v Cadillac Motor Car Co*, 198 Mich 501, 511; 165 NW 698 (1917). In general, actionable fraud must be predicated on a statement relating to past or existing fact; however, an exception exists for fraud in the inducement. *Samuel D. Begola Services, Inc v Wild Brothers*, 210 Mich App 636, 639; 534 NW2d 217 (1995). "Fraud in the inducement occurs where a party materially misrepresents future conduct under circumstances in which the assertions may reasonably be expected to be relied upon and are relied upon." *Id.*

In the present matter, plaintiff alleges defendant offered fraudulent evidence to the EEOC with regards to plaintiff's 2002 retaliation charge. Due to this fraudulent evidence, plaintiff contends, the EEOC dismissed his claim and issued a right to sue letter. Upon receipt of this letter, plaintiff, knowing he had the right to initiate a lawsuit against defendant, contacted defendant and signed a severance agreement. Plaintiff states that he would not have signed the severance agreement had he known the EEOC relied upon allegedly fraudulent evidence.

Plaintiff relies upon minor discrepancies between versions of working documents that defendant modified through the ordinary course of business. Plaintiff points to changes in the "goal" and "status" sections of his 2001 and 2002 Objectives. According to plaintiff, the changes demonstrated he had poor work performance and the removal of projects. Plaintiff alleges these changes were made for the purpose of misleading the EEOC. Plaintiff concedes that the objectives could be modified for a legitimate reason and he never observed documents that contained his assertions. *See* Exhibit 17 of Defendant's brief in support of motion for summary disposition, p 118-119; 156. Plaintiff further attempts to explain discrepancies and the

absence of evidence with the theory that at the same time he accessed and printed the documents, defendant was altering the documents. *Id.* at 144-145. There is no evidence to support this theory.

Defendant provides evidence to demonstrate that there were regular changes in employee objectives. The affidavit of Chester S. Ricker, former vice-president of defendant, maintains updates to employee objectives form were commonly made based on meetings and the status of the projects. *See* Exhibit 17 of Defendant's brief in support of motion for summary disposition. These changes were consistent with defendant's policies and were entered by either the employee or supervisor. *Id.* The affidavit of Catherine Ann Boussie ("Boussie"), plaintiff's former supervisor, further substantiates this assertion. *Id.* Boussie specifically states that plaintiff's objectives form was updated after discussions at meetings and not for any purpose related to plaintiff's EEOC charge. *Id.* The affidavit of Kathleen Ward, former vice-president of human resources, insists supervisors commonly updated employee objectives. Additionally, the affidavits provided by Kelley Sosnowski and Chris Printz, former employees of defendant, maintain the objectives forms were initially drafted by the employee, but periodically updated by either the employee or supervisor. *Id.*; Exhibit 3 of Plaintiff's brief in response to defendant's motion for summary disposition.

Plaintiff provides no evidence in opposition to these statements and fails to provide evidence that his objectives forms were altered in any improper manner. Plaintiff attempts to discredit these affidavits, but mere conclusory statements are not sufficient to create a genuine issue of material fact. *Rose v National Auction Group, Inc.*, 466 Mich 453, 470; 646 NW2d 455 (2002). The record clearly supports the evidence provided to the EEOC was accurate, and the evidence suggesting otherwise is minimal.

Even if plaintiff demonstrated misrepresentations by defendant, he provides no evidence that he relied upon these assertions when signing the severance agreement. Plaintiff admits he was not even aware of the alleged misrepresentations at the time he signed the severance agreement. *See* Exhibit 2 of Defendant's brief in support of motion for summary disposition, p 32-33. There is no indication that the EEOC would have ruled differently in the absence of the alleged misrepresentations. The record clearly demonstrates that plaintiff was aware of his right to sue and voluntarily chose to sign the severance agreement. *Id.* The Court finds no evidence offered demonstrates defendant materially misrepresented any information in an effort to induce plaintiff to sign the severance agreement. Therefore, a question of fact does not exist.¹

The Court further finds defendant has not demonstrated plaintiff's claim is frivolous, therefore its request for other relief is denied.

IV

Based on the foregoing, it is hereby

ORDERED defendant's motion for summary disposition is GRANTED and its motion for other relief is DENIED. Pursuant to MCR 2.602(A)(3), the Court states this Opinion and Order resolves the last claim and closes the case.

SO ORDERED.

DATED:

cc: Claudia Orr
Daniel Bajor

Peter J. Maceroni,
Circuit Judge

PETER J. MACERONI
CIRCUIT JUDGE

AUG 17 2006

A TRUE COPY
CARMELLA SABAUGH, COUNTY CLERK

BY: *[Signature]* Court Clerk

¹ Based upon the Court's conclusion, it is unnecessary to address defendant's remaining arguments pertaining to plaintiff's alleged failure to tender back consideration.